

PT 95-5  
Tax Type: PROPERTY TAX  
Issue: Religious Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
SPRINGFIELD, ILLINOIS

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RIVERWOODS CHRISTIAN CENTER      )   Docket No.(s)  92-45-179
                                  )   PI No.(s)   Part of Kane
                                  )                   County parcel No.
                                  )                   9-10-326-014,
                                  )                   identified as lots
                                  )                   44 and 45 of the
                                  )                   plat of Camp Rude
                                  )
      Applicant                  )
                                  )
      v.                          )
                                  )
                                  )
                                  )
THE DEPARTMENT OF REVENUE         )
OF THE STATE OF ILLINOIS         )   George H. Nafziger
                                  )   Administrative Law Judge
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RECOMMENDATION FOR DISPOSITION

APPEARANCES    Mr. Chad I. Buttell and Mr. William F. Castillo,  
attorneys for Applicant, appeared on behalf of Applicant.

SYNOPSIS    A hearing was held in this matter on December 13, 1994, to  
determine whether or not a part of Kane County parcel No. 9-10-326-014,  
identified as lots 44 and 45 of the plat of Camp Rude, and improved with a  
residence commonly identified as the Aspen residence (hereinafter referred  
to as the "Aspen Parcel"), should be exempt from real estate tax for the  
1992 assessment year.

Is Applicant a religious and charitable organization? Did Applicant  
own the Aspen Parcel for real estate tax purposes during 1992? Was the  
Aspen Parcel and the house located thereon, used for religious and  
charitable purposes during 1992? Following the submission of all the  
evidence and a review of the record, it is determined that Applicant is a  
religious and charitable organization, that it owned the Aspen Parcel for

real estate tax purposes during all of 1992, and that it used said Aspen Parcel for religious and charitable purposes during said year.

FINDINGS OF FACT The Department's position in this matter was established by the admission in evidence of Department's Exhibits 1 through 6C.

On March 12, 1993, the Kane County Board of Review forwarded an Application for Property Tax Exemption To Board of Review, concerning a partial or complete interest in a total of approximately 53 acres of land and the leasehold interest in the Aspen Parcel for the 1992 assessment year, to the Illinois Department of Revenue (Department's Exhibit 2). On July 15, 1993, the Department notified the Applicant that it was exempting the approximately 53 acres of land for various portions of the 1992 assessment year, and denying the exemption of the Aspen Parcel for the 1992 assessment year (Department's Exhibit 3). Applicant's executive director, by a letter dated July 20, 1993, requested a formal hearing, concerning only the denial of exemption of the Aspen Parcel for the 1992 assessment year (Department's Exhibit 4). The hearing in this matter, held on December 13, 1994, was held pursuant to that request.

Rev. Tony Danhelka, executive director of Applicant, and Mr. Robert Whitt III, director of programming of Applicant, were present at the hearing, and testified on behalf of Applicant.

Applicant acquired the ownership of Kane County parcel No. 9-10-326-014 during the fall of 1983. At that time, the Aspen Parcel was subject to a 99-year lease to one Wilbur C. Boutwell. During October 1990, Mr. Boutwell conveyed his leasehold interest in the Aspen Parcel to Wayside Cross Rescue Mission. At the time of that conveyance, Mr. Boutwell wrote a letter dated October 12, 1990, which stated that this conveyance was with the understanding that an employee of Applicant would continue to occupy the Aspen Parcel, provided Applicant maintained said parcel. Both Rev.

Danhelka and Mr. Whitt testified that Mr. Whitt and his wife lived in the house on the Aspen Parcel during the entire 1992 assessment year. During March 1992, Applicant began a three-payment installment purchase of the approximately 53 acres of land, plus the leasehold interest in the Aspen Parcel from Wayside Cross Rescue Mission. This 53 acres surrounded the land owned by Applicant, at that time. Pursuant to that installment purchase agreement, the aforesaid leasehold interest in the Aspen Parcel was conveyed to Applicant on March 26, 1992. This conveyance, along with others executed pursuant to the aforesaid installment purchase contract, resulted in the filing of the application for exemption here in issue.

Applicant was incorporated on March 16, 1977, pursuant to the "General Not For Profit Corporation Act" of Illinois, for purposes which included the following:

"To fulfill the injunction of our Lord and Savior, Jesus Christ, to carry the Gospel to all people; to convey by word and deed the Gospel and evangelical Christian faith; to emphasize this evangelical outreach through camping, teaching, and teaching seminars, retreats, drama, music, preaching and such para-church activities as may be found effective; said efforts to be made either alone or in conjunction with organized churches or other Christian groups; to conduct schools and classes for the training and instruction of ministers of the Gospel; to give and receive contributions for Missionary and Evangelistic purposes; to publish and circulate religious books and papers for the dissemination of the Gospel; to engage in religious work among all people; to secure a closer fellowship in the Spirit, and cooperation among Ministers and workers who are standing on the full Word of God."

Applicant operates an 85-acre camp site along the Fox River, which includes the Aspen Parcel.

During 1992, Applicant ministered to, and worked with, children and families who lived in 15 recognized poverty areas or neighborhoods in Kane County. One of those areas was located in Carpentersville, seven were around Elgin, and seven were around Aurora. Applicant utilized its 85-acre camp site by operating a year-round men's program for 8 to 12 men there, who were recovering alcoholics. In addition, Applicant operated a 10-week

children's summer camping program at the campsite during the summer. This summer program involved about 80 children per week from the aforementioned poverty areas. In addition, Applicant operated weekend retreat programs at the camp the rest of the year, for the children from those poverty areas. The men's program, and also all of the camping programs, as well as its other programs, were provided by Applicant, at no cost, to the various recipients of those programs during 1992.

In addition, I take Administrative Notice of the fact that the Director of Revenue on April 4, 1994, in Docket No. 91-45- 152, determined that Applicant was a religious and charitable organization.

During all of the 1992 assessment year, Mr. Robert Whitt III, and his wife, lived in the house on the Aspen Parcel. During that year, Mr. Whitt's position was that of program coordinator for Applicant's camp facility. It was a condition of his employment during that year, that he live in the house on the Aspen Parcel. During 1992, he had no outside employment. During 1992, he paid no rent to Applicant, but he did pay the utilities on the house on the Aspen Parcel. He had no ownership interest in the Aspen Parcel during 1992. During 1992, he hired the 40 part-time summer camping staff, as well as 6 or 7 persons who worked with the men's program. He not only was in charge of programming for the camp, but was also responsible for training and counseling the staff, and handling disputes and disturbances, concerning any of the programs at the property. He was on call 24 hours a day, seven days a week, to assist in conflicts or disputes between staff and/or campers and staff and/or participants in the men's program. He had teenagers with problems stay at the Aspen residence over night, on occasion. He did tutoring with children at the house on the Aspen Parcel during 1992, and occasionally held staff meetings there.

1. Based on the foregoing, I find that Applicant is a religious and charitable organization.

2. I find that Applicant owned the fee in the Aspen Parcel during all of the 1992 assessment year.

3 The leasehold interest in the Aspen Parcel, I find, was held in trust by Wayside Cross Rescue Mission for the use and benefit of Applicant from January 1, 1992, through March 26, 1992.

4. During the period March 27, 1992, through December 31, 1992, I find, that all interests in the Aspen Parcel were owned by Applicant.

5. Finally, I find that Applicant used the Aspen Parcel for religious and charitable purposes during all of 1992.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.2 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v.*

University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

As has been previously pointed out, the Director of Revenue in Docket No. 91-45-152, determined that Applicant is a religious and charitable organization. During the period January 1, 1992, through March 26, 1992, while Applicant owned the underlying fee to the Aspen Parcel, that parcel was subject to a leasehold owned by Wayside Cross Rescue Mission. However, I have previously found that pursuant to the letter from Mr. Wilbur C. Boutwell that leasehold was impressed with a trust for the use and benefit of Applicant. The Illinois Courts have held that property will qualify for exemption where it is held by an organization in trust for the use and benefit of an exempt organization. See *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). See also *Community Mental Health Council, Inc. v. Department of Revenue*, 186 Ill.App.3d 73 (1989). In addition, see the case of *People v. Chicago Title and Trust Co.*, 75 Ill.2d 479 (1979), where the Court held that the holder of the beneficial interest in a land trust was the owner of the property for real estate tax purposes, as that party controlled the possession and use of the property, and received the benefits therefrom. There is no question that since Mr. Robert Whitt III, the program director of Applicant, occupied the house on the Aspen Parcel during the period January 1, 1992, through March 21, 1992, that the Aspen Parcel was owned by Applicant for real estate tax purposes, during that period.

The Supreme Court in *MacMurray College v. Wright*, 38 Ill.2d 272 (1967), in considering whether or not faculty housing at a college qualified for exemption, applied a two-part test. First, were the residents of the houses required to live in the residences because of their exempt

duties for the organization, or were they required to, or did they perform any of their exempt duties there? As has been previously pointed out, the evidence in this case shows that Mr. Whitt's occupancy of the house on the Aspen Parcel met each of the foregoing tests during the entire 1992 assessment year.

I therefore recommend that the portion of Kane County parcel No. 9-10-326-014 identified as lots 44 and 45 of the plat of Camp Rude and the residence located thereon, be exempt from real estate taxes for the 1992 assessment year.

Respectfully Submitted,

George H. Nafziger  
Administrative Law Judge

February , 1995